

United States District Court
Western District of New York

United States of America,

Plaintiff

vs

Peter Gerace, Jr.

Joseph Bongiovanni,

Defendant

Bongiovanni Response to
Government's Motion for Joinder of
Indictments

19-CR-227-JLS

23-CR-037-JLS

James P. Harrington affirms to be true and states under penalty of perjury as follows:

1. I am an attorney for Joseph Bongiovanni, a defendant and a co-defendant of Peter Gerace, Jr., in Indictment No. 19-CR-227.

2. Mr. Bongiovanni is not a defendant in Indictment No. 23-CR-037 for which Mr. Gerace was recently indicted.

3. On March 28, 2023, the government filed a motion to join the two above indictments under Rule 13 of the Federal Rules of Criminal Procedure.

4. The allegations in the new indictment do not mention Mr. Bongiovanni, nor, on information and belief, is there any allegations that Mr. Bongiovanni is connected to these charges in any way.

5. Although this issue more particularly relates to Mr. Gerace, there is prejudice to Mr. Bongiovanni in joining the two indictments.

6. Pending with the Court is Mr. Bongiovanni's motion for severance on two

grounds, namely misjoinder of offenses and his need to call Mr. Gerace as a defense witness.

7. Mr. Bongiovanni's misjoinder severance motion relates to Count 9 in the joint indictment, but where Mr. Gerace is the sole defendant alleging the serious and inflammatory crime of sex trafficking.

8. Mr. Bongiovanni's objection to the government's joinder motion relates to that part of his severance motion.

9. In support of his severance motion, Mr. Bongiovanni cited a decision of the Hon. Frank Geraci, then Chief District Judge for the Western District of New York, in a case with the same charges pending against him under Indictment No. 19-CR-227, namely sex trafficking and drug conspiracy. *United States v. Lewis*, 2019 WL 2442145 (WDNY, 2019)

10. In *Lewis*, illegal drugs were supplied by one defendant, Valentino Shine ("Shine") to co-defendant Jesse Lewis ("Lewis"). Lewis then provided drugs to sex trafficking victims as part of the coercion to commit sex acts. This is what the government alleges Mr. Gerace used drugs for as a tool in his alleged sex trafficking charge.

11. Judge Geraci found that this evidence was prejudicial and would be inadmissible against Shine. He also stated that this joint trial would focus on the sex trafficking charge.

12. When the original indictment was returned, the prejudice to Mr. Bongiovanni because of the sex trafficking charge against only Mr. Gerace was apparent as recognized by Judge Geraci in *Lewis*.

13. The addition of witness tampering charges which allegedly happened before Mr. Gerace was indicted and on the eve of trial, while egregious in itself and an abuse of prosecutorial discretion and fair play, exacerbates and heightens the prejudice to Mr. Bongiovanni set forth in his severance motion and should not be permitted in any trial of him.

Dated: April 7, 2023

Respectfully submitted,

/s/ James P. Harrington

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